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Right to health under the domain of article 21

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Abstract

Health is a fundamental component of human growth, and the health sector is vital to a country's well-being. As a result, Article 21 of our Constitution recognizes it as a fundamental human right. In terms of income and employment, The Indian health industry is one of the world's largest and fastest-growing service sectors, as well as one of the most expensive. In the last two decades, India's tremendous economic expansion has not resulted in the country's development or improved living conditions for the poorest. "It is estimated that 15% of India's population does not have access to health care services, either because of a lack of availability or because of financial constraints. Furthermore, 75 percent of qualified doctors work in cities, 23 percent in towns, and only 2% in rural areas." For the sake of research some empirical data has been taken into consideration the researcher has completely relied upon the secondary source of data. The research has been conducted through doctrinal research methodology.

Keywords: Health care, governance, Indian, way ahead

Introduction

Health is a basic requirement of an individual across the globe and is also the basic foundation of the existence of the life of the individual. It is directly linked with the life of the people. Nowadays India is facing problems of degradation of health. During Covid-19 the second wave, many of the people died because of a lack of proper health facility and it was widely reported in the media. Under the social contract theory, the state is constitutionally bound to protect the life of the people because all the people have surrendered their rights in front of the States. Our founding fathers have defined the State under Article-12- the "State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India ^[1]. Under this theory, the state must ensure the creation and sustaining of conditions congenial to good health. Six fundamental rights are guaranteed in the constitution but our constitution does not expressly recognize the right to health as a fundamental right. But there are various provisions under the constitution that deals with a health issue like Article 39 (e) (f), 42, and 47." Health is a very much important factor in national development. The right to health is a very important right without which no one can enjoy basic human rights.

Although the right to health is not directly recognized in Part III of the Indian Constitution, the judiciary has played an important role in enlarging the scope of Article -21. The Hon'ble Supreme Court and the Hon'ble High Courts issued a number of rulings to preserve the public's health. Through case law, the Supreme Court of India recognized health as a right to health under Article 21 of the Indian Constitution, and the Supreme Court's verdict is binding under Article 141.

The Provisions for the Protection of Health under DPSP

"Part IV of the Indian Constitution deals with the directive principles of State policy". Although it is not enforceable in the Court of law ^[2]. In part IV only guidelines are given for creating a "social order characterized by social, economic, and political justice, liberty, equality, and fraternity as enunciated in the preamble."

There are following provisions are relevant in the light of the Right to health

"Article 39 (e)- that the health and strength of workers, men, and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength ^[3]."

"Article 39 (f) - that children are given opportunities and facilities to develop in a healthy

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manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment [4].”

“Article 42- The State shall make provision for securing just and humane conditions of work and for maternity relief [5].”

“Article 47- Duty of the State to raise the level of nutrition and the standard of living and to improve public health.”

In the Light of DPSP Hon’ble Supreme Court of India has also pronounced the judgment for the protection of the health of the people. In *“Lakshami Kant Pandey v. Union of India”* [6], “Bhagwati, J.” While pronouncing the judgment he observed that “It is obvious that in a civilized society the importance of child welfare cannot be overemphasized because the welfare of the entire community, its growth and development depends upon the health and well-being of its children. Children are a supremely important national asset and the future well-being of the nation depends on how its children grow and develop”. The case was decided by the Hon’ble Supreme Court for equitable and humane working conditions and maternity relief *“U.P.S.C. Board v. Harishankar”* [7], the court underlined that the constitution indicates a strong concern for worker welfare. The court may not enforce the DPSP, but it must interpret the legislation in a way that does not jeopardize the DPSP’s goal. In *“P Sivaswamy v. State of Andhra Pradesh”* [8], the Supreme Court held that “The state is required under Article 42 to establish provisions for securing just and humane working conditions. Various Articles in Part IV of the Constitution state that it is the state’s responsibility to establish a social environment that benefits human dignity for citizens to live in.”

Right to Health under Part III of the Constitution

The people’s fundamental rights were recognized in “Part III of the Indian Constitution”. People’s fundamental rights are not absolute, and they are bound to reasonable limitations when exercising them. “Although India’s constitution does not explicitly mention health as a fundamental right, the Indian judiciary has ruled that the right to health is an intrinsic aspect of life and that the state has a constitutional obligation to provide basic health services [9].” In *“C.E.R.C v. Union of India”* [10], the Supreme Court held that Article 21 states that the right to health, as well as medical assistance to protect a worker’s health and vigor while in service or after retirement, is a fundamental right. Right to Health and Medical Assistance

In *“Paramanand Katara v Union of India”* [11], it has been held “that it is the professional obligation of all doctors, whether government or private, to provide medical aid to the injured immediately in order to preserve life, rather than waiting for legal formalities to be completed by the police under Cr.P.C. Article 21 of the Indian Constitution places the responsibility for life preservation on the state.” It is the responsibility of those in charge of the health community to preserve life in order to protect the innocent and punish the wicked. Death through carelessness, which is a kind of legal punishment, is not covered by social laws. No law or government action can prevent members of the medical profession from carrying out their most important responsibility. Laws of procedure, whether in status or otherwise, that could obstruct the discharge of this obligation cannot be supported and must, as a result, be abandoned. The court ordered that, in order for everyone to be aware of this position, the court’s decision be published

in all publications reporting the court’s decision, and that enough publicity highlighting these features be given in the national media. The medical council is required to provide copies of this decision to each of its affiliated medical colleges. This is a highly significant court decision. It is said that if the court’s ruling is implemented in its entirety, it will assist in saving the lives of many persons who have perished as a result of doctors refusing to provide prompt medical assistance because they are not permitted to treat a medico-legal matter.

In *“Vincent Parikurlangra v. Union of India”* [12], the Supreme court “held that the right to maintenance and improvement of public health is an integral part of the right to live with human dignity enriched in Article 21.”

In *“Paschim Beng Khet Mazdoor Samiti v. State of West Bengal”* [13], the Supreme Court held that “the denial of medical aid by government hospital to an injured person on the ground of the non-availability of beds amounted to a violation of the right to life under Art. 21 of the constitution. In this case, the petitioner, Hakim Singh, who was a member of an organization of agricultural laborers, had fallen from a running train and had suffered serious head injuries and brain hemorrhage. He was taken to various government hospitals in the city of Calcutta but because of the non-availability of beds has was not admitted. Ultimately he was admitted to a private hospital as an indoor patient and he had to incur an expenditure of Rs. 17000/- in his treatment. The SC held that Art. 21 imposes an obligation on the state to provide medical assistance to every injured person. Preservation of human life is of paramount importance. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Art. 21 of the constitution. The court directed the state to pay Rs. 25000/- to the petitioner as compensation.”

In *“Consumer Education and Research Centre v. Union of India”* [14], the SC According to Art. 21 of the Indian Constitution, the right to health and medical care is a basic right. The court gives the following recommendations for all industries to follow.

- (a) “All asbestos industries must make health insurance for workers employed in the industry.”
- (b) “Every worker suffering from occupational health hazards would be entitled to compensation of Rs one lakh.”
- (c) “All asbestos industries must maintain the health record of every worker up to a minimum period of 40years from the beginning of the employment or 15 years after retirement cessation of the employment whichever was later.”
- (d) “Membrane filter test”- All factories should follow the “Metalliferous Mines Regulations, 1961 Vienna Convention” to detect asbestos fiber.
- (e) “All the factories whether covered by the employees’ State insurance Act, or workmen’s compensation Act, or otherwise, should ensure health coverage to every worker.”

The court also ordered the center and all state governments to examine the norms of allowable exposer limit value of fiber in accordance with international standards after ten years, when the ILO issues direction in this regard.

In *“State of Punjab v. Mohinder Singh Chawla”* [15], the court held that because the “right to life is included in Art.

21 of the constitution, state personnel are entitled to medical reimbursement of treatment expenses and room rent charges in an approved specialty hospital outside of government hospitals.” The court ruled that the right to health is an inherent aspect of the right to life and that the government has a constitutional obligation to provide health services. As a result, the state must pay for the treatment of government employees while they are on the job or after they retire.

Conclusion

The importance of the courts in interpreting “Art. 21 of the Indian Constitution” is clear from the preceding examination of major judgments. The judiciary has stated that the right to health is an intrinsic aspect of the right to life and that the two rights are intertwined. Art. 21 is useless unless the state guarantees the right to health. Regardless of colour, religion, social rank, or financial means, every citizen has a “right to high-quality health care, treatment, and medication.” When state and municipal officials fail to fulfil their obligations, the courts can intervene.

References

1. The Constitution of India art. 12.
2. The Constitution of India art 37.
3. The Constitution of India art. 39 (e).
4. The Constitution of India art. 39 (f).
5. Article- 42 Provision for just and humane conditions of work and maternity relief.
6. AIR 1984 SC 469.
7. AIR 1979 SC 65
8. AIR 1988 SC 1863
9. State of Punjab v. Mahinder Singh Chawla AIR 1997 SC 1225.
10. AIR 1995 SC 922.
11. AIR 1989 SC 2039.
12. (1987) 2 SCC 165.
13. (1996) 4 SCC 37.
14. (1995) 3 SCC 42.
15. AIR 1937 SC 1225.